



Dale Saran <dalesaran@gmail.com>

Adding Plaintiffs

Dale Saran <dalesaran@gmail.com>

Fri, Jul 1, 2022 at 12:51 PM

To: "Avallone, Zachary A. (CIV)" <Zachary.A.Avallone@usdoj.gov>

Cc: "Lowenstein, Jody D. (CIV)" <Jody.D.Lowenstein@usdoj.gov>, Jerri Ward <jward@garloward.com>, Brandon Johnson <bcj@defendingtherepublic.org>

Thanks, Zach.

Given that state of affairs, it seems for the moment we've obviated any need for TROs and I think we should be able to keep ahead of it from here on out.
Appreciate your help on this.

Dale

On Fri, Jul 1, 2022 at 12:49 PM Avallone, Zachary A. (CIV) <Zachary.A.Avallone@usdoj.gov> wrote:

Dale — A quick update on the two Army folks in the highlighted text below.

Zachary A. Avallone | Trial Attorney

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zachary.a.avallone@usdoj.gov**From:** Avallone, Zachary A. (CIV)**Sent:** Thursday, June 30, 2022 9:06 PM**To:** Dale Saran <dalesaran@gmail.com>**Cc:** Lowenstein, Jody D. (CIV) <Jody.D.Lowenstein@usdoj.gov>; Jerri Ward <jward@garloward.com>; Brandon Johnson <bcj@defendingtherepublic.org>**Subject:** RE: [EXTERNAL] Adding Plaintiffs

Thanks, Dale. We're looking into those folks you listed below. Here's an update and some questions:

1. For the National Guard folks (Joel Rasanen, Michael Darnell, Joshua Donaldson), I know that they're no longer eligible to do T32 training or duty starting tomorrow, but I'm not aware of any policy that they would be "tossed" tomorrow. Could you give me a little more insight into why they would have an emergency?
2. Army is checking on Andrew Daniele (W-2) and Stephen Welch (E-5). Do these guys have discharge orders or have they started the process? **Andrew Daniele submitted an unqualified resignation, effective today. Stephen Welch has submitted (or is about to submit) a religious accommodation request, so he is (or soon will be) temporarily not required to comply with the COVID-19 vaccination requirement. I understand that Stephen Welch may also be undergoing a separate medical review process unrelated to his vaccination status.**
3. The Air Force is running down the status of Aaron Elliot and his potential reassignment to the IRR. It's my understanding that even if he's recommended for reassignment to the IRR, it will take approximately 60-90 days to complete the transfer.

4. Could you double-check the name of Kyle Davis? Is that service/rank correct?

Thanks,

Zach

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From: Dale Saran <dalesaran@gmail.com>

Sent: Thursday, June 30, 2022 5:20 PM

To: Avallone, Zachary A. (CIV) <Zachary.A.Avallone@usdoj.gov>

Cc: Lowenstein, Jody D. (CIV) <Jody.D.Lowenstein@usdoj.gov>; Jerri Ward <jward@garloward.com>; Brandon Johnson <bcj@defendingtherepublic.org>

Subject: Re: [EXTERNAL] Adding Plaintiffs

Zach -

Really appreciate your candor on this. In order to reciprocate, attached is a draft of our Intervenor Motion. (In essence, it's a chopped down copy of the complaint).

And it gives you a list of all of our plaintiffs except those who asked to proceed pseudonymously. (I was off by a factor of 4 or 5 on my estimate of a "dozen" - I need to get an eye test.)

Here are the folks I know who are facing being tossed tomorrow. There are only 7 of them.

Joel Rasanen: Army/W-3; Det 6 B Co, 2/245 AVN

Andrew Daniele: Army/W-2; 4th Squadron, 6th Cav Regiment

Michael Darnell: Army/E-4; Alpha 1-113th FA 30th ABCT NC Army NG; 8338

Kyle Davis: AF/O-4; 911 Aeromedical Staging Squadron

Joshua Donaldson: Army/W-3; Alpha Company, 1st Battalion NCARNG; 1600

Aaron Elliot: AF/O-4 CGSCC CJ5/8; 3502

Stephen Welch: Army/E-5; HSMC 2-227th, 1ACB, 1CB; 8320

If those folks can get a pause, then that gives us a little more time to hash this out.

Thanks,

Dale

On Thu, Jun 30, 2022 at 3:47 PM Avallone, Zachary A. (CIV) <Zachary.A.Avallone@usdoj.gov> wrote:

Thanks, Dale. Using the rules for intervention makes it tricky on our end because the standards for permissive intervention may conflict with our potential position that there are common claims or legal issues. So I don't think it's going to be possible for us to consent without seeing the basis for intervention (and depending on the basis, we may even have to oppose if only to preserve our legal arguments). If you're planning on filing soon, you can just note that Defendants do not take a position.

On a related note, we've been looking into the folks who you flagged for us and it seems that most (if not all) are not really in imminent danger of IRR transfer or discharge. We're still tracking down some more info (particularly on the Air Force side) and should know more soon.

It's very possible that we will be able to brief the PI before you'd need to file a TRO anyway. ::fingers crossed::

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On Jun 30, 2022, at 8:50 AM, Dale Saran <dalesaran@gmail.com> wrote:

If it helps with folks up above, Zach, the "Motion" to amend will be a complaint in style, including having all of the names in a caption, just like an amendment would.

I've attached the Doster motion to intervene as an example. They've even styled it an "intervening complaint."

Ours will be filed today.

Thanks,

dale

On Wed, Jun 29, 2022 at 1:45 PM Avallone, Zachary A. (CIV) <Zachary.A.Avallone@usdoj.gov> wrote:

Thanks, Dale. And in the meantime we'll work to run the intervention idea up the flagpole.

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On Jun 29, 2022, at 2:12 PM, Dale Saran <dalesaran@gmail.com> wrote:

Zach-

Absolutely. We'll file the PI Motion on Friday.

Dale

On Wed, Jun 29, 2022 at 1:01 PM Avallone, Zachary A. (CIV) <Zachary.A.Avallone@usdoj.gov> wrote:

Dale,

Thanks very much for your email and I understand your position regarding amendment v. intervention. Let us run down that issue on our end.

As we're doing that, are you all planning on filing the PI motion soon? We'd like to be able to get both sides' merits before the court asap (and then hopefully we'll never have to deal with emergency TROs!).

Thanks so much,

Zach

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On Jun 29, 2022, at 12:58 PM, Dale Saran <dalesaran@gmail.com> wrote:

Zach, Jody,

After our conversation yesterday, and in talking to Brandon about our plaintiffs' situation, rather than amend (at this point) to add folks by name, we're going to Motion the Court for our group of servicemembers to intervene by name.

Three questions for you about that:

- Will that still satisfy your need to have all of the plaintiffs *named* (for purposes of our discussion regarding asking the commands to pause any adverse admin or discharge actions while we litigate the PI motion?)
- Will you oppose the motion?
- Any objection to us asking for a waiver of Rule 10 (since the case is already captioned) so that we don't have to include ~700 names in the caption? We can do it, but I would rather just attach the list of plaintiffs at the end of the intervenor motion as an exhibit, for ease of handling.

On either heads up, I think we have about a dozen folks who would like to remain anonymous, so if you see those 12 or so "John Does" that's what's going on. We'll get those names to you separately if/when that comes up.

Thank you both for your time yesterday.

Cheers,

Dale

<Doster v. Kendall Intervenor Complaint.pdf>